

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF ROBERT
BACKMAN d.b.a. QUEEN ANNE
COURT APARTMENTS,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 416

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 13th day of November, 1973, at Seattle, Washington; and appellant Robert Backman appearing pro se and respondent Puget Sound Air Pollution Control Agency appearing through its attorney Keith D. McGoffin; and Board member present at the hearing being Walt Woodward; and the Board having considered the exhibits, reviewed the transcript records and files herein and having entered on the 18th day of

1 December, 1973, its proposed Findings of Fact, Conclusions of Law
2 and Order; and the Board having served said proposed Findings,
3 Conclusions and Order upon all parties herein by certified mail,
4 return receipt requested and twenty days having elapsed from said
5 service; and

6 The Board having received no exceptions to said proposed
7 Findings, Conclusions and Order; and the Board being fully advised
8 in the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 18th day of
11 December, 1973, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 25th day of January, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 Walt Woodward
17 WALT WOODWARD, Chairman

18 W. A. Gissberg
19 W. A. GISSBERG, Member

20 Mary Ellen McCaffree
21 MARY ELLEN McCAFFREE, Member

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Mr. Keith D. McGoffin
Burkey, Marsico, Rovai
& McGoffin
818 South Yakima Avenue
Tacoma, Washington 98405

Mr. Robert Backman
dba Queen Anne Court Apt.
23 W. Galer
Apartment 209
Seattle, Washington 98119

Puget Sound Air Pollution
Control Agency
410 West Harrison Street
Seattle, Washington 98119

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U.S.mail.

Larene C. Barlin
LARENE C. BARLIN
POLLUTION CONTROL HEARINGS BOARD

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF ROBERT)
BACKMAN d.b.a. QUEEN ANNE)
COURT APARTMENTS,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 416

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) in a formal hearing in the Washington Commerce Building, Seattle, Washington, at 11:00 a.m., November 13, 1973.

Appellant appeared pro se. Respondent appeared through Keith D. McGoffin. Ernest Yamaguchi, Seattle court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard, exhibits examined and transcript reviewed,
2 the Pollution Control Hearings Board makes these

3 FINDINGS OF FACTS

4 I.

5 From the boiler stack of the Queen Anne Court Apartments,
6 23 W. Galer Street, Seattle, King County, under lease to appellant
7 with option to purchase, there was emitted black smoke of a shade
8 equivalent to Nos. 4 and 5 on the Ringelmann Scale for eight consecutive
9 minutes about 10:30 a.m., May 30, 1973. Appellant promptly took
10 measures to correct the emission after being notified of it by respondent.

11 II.

12 This emission, noted by an inspector on respondent's staff,
13 resulted in respondent's Notice of Violation No. 6792, citing a
14 violation of Section 9.03 of respondent's Regulation I, being served
15 on appellant. Subsequently, and in connection therewith, respondent
16 also caused Notice of Civil Penalty No. 919, in the sum of \$50.00,
17 to be served on appellant. That penalty is the subject of this appeal.
18 Notice of Violation No. 6792 was the first served on appellant by
19 respondent.

20 III.

21 Section 9.03 of respondent's Regulation I makes it unlawful
22 "to cause or allow" the emission of an air contaminant for more than
23 three consecutive minutes in any one-hour period of a shade darker than
24 No. 2 on the Ringelmann Scale. Section 3.29 of respondent's Regulation
25 I authorizes respondent to levy a civil penalty of not more than \$250.00
26 for any violation of Regulation I.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 From these findings, the Pollution Control Hearings Board comes
2 to these

3 CONCLUSIONS OF LAW

4 I.

5 Appellant was in violation of Section 9.03 of respondent's Regulation
6 I on May 30, 1973, as cited in Notice of Violation No. 6792.

7 II.

8 Notice of Civil Penalty No. 919, being one-fifth the maximum
9 allowable amount, is reasonable, but appellant, who took prompt
10 remedial action and who has had only this one citation served against
11 him, is entitled to further consideration.

12 Therefore, the Pollution Control Hearings Board issues this

13 ORDER

14 The appeal is denied and Notice of Civil Penalty No. 919 is
15 sustained in the sum of \$50.00. However, the penalty is remanded to
16 respondent for immediate collection of only \$25.00, the balance of
17 \$25.00 being suspended pending no similar violations for a period of
18 six months from the date this Order becomes final.

19 DONE at Lacey, Washington, this 18th day of December, 1973.

20 POLLUTION CONTROL HEARINGS BOARD

21 Walt Woodward
22 WALT WOODWARD, Chairman

23 W. A. Gissberg
24 W. A. GISSBERG, Member

25 Mary Ellen McCaffree
26 MARY ELAEN McCAFFREE, Member

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER